

AMENDED IN SENATE AUGUST 4, 2014

AMENDED IN SENATE JUNE 16, 2014

AMENDED IN SENATE JUNE 9, 2014

AMENDED IN SENATE MAY 28, 2014

AMENDED IN SENATE MAY 6, 2014

AMENDED IN ASSEMBLY MAY 24, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 380

Introduced by Assembly Member Dickinson

February 14, 2013

An act to add Article 5 (commencing with Section 25547) to Chapter 6.95 of Division 20 of the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 380, as amended, Dickinson. Spill response for railroads.

Existing law requires the Office of Emergency Services to implement regulations establishing minimum standards for business plans and area plans relating to the handling and release or threatened release of hazardous materials. Existing law requires the establishment of a statewide environmental reporting system for these plans.

This bill would require a rail carrier, as defined, to report specified information regarding the transportation of hazardous materials, beginning no later than January 31, 2015, to the office on a quarterly basis. *The bill would require a rail carrier to prospectively estimate and submit to the office notification of the weekly movements of trains*

through a county, as specified. The bill would require a rail carrier to update that notification once every 6 months. The bill also would require a rail carrier to update and notify the office within 30 days of the rail carrier determining that there will be a material change in the estimated volume of Bakken oil, as defined, plus or minus 25% per week relative to the most recent estimate previously submitted to the office. The bill would require each rail carrier to maintain a response management communications center, as specified. The bill would require the office to disseminate information necessary for developing emergency response plans from the quarterly reports it receives pursuant to this act to each unified program agency, as defined, when the office determines a unified program agency area of responsibility may be impacted by a hazardous material or oil cargo spill. The bill would require each rail carrier to provide the office with a summary of the rail carrier's hazardous materials emergency response plan, as specified. The bill would require the office to provide a copy of each summary report of a rail carrier's hazardous materials emergency response plan to each unified program agency when the office determines a unified program agency area of responsibility may be impacted by a rail carrier spill of hazardous material or oil cargo and that unified program agency has been identified by the rail carrier, in consultation with the office, as able to receive security sensitive information, as specified, on a need-to-know basis, as specified. The bill would prohibit a recipient of the reports and hazardous materials emergency response plan from divulging or making known that information to unauthorized recipients, as specified. The bill would deem the reports and hazardous materials emergency response plan to be proprietary information and would limit the dissemination of that information to those government personnel with emergency response, planning, or security-related responsibilities on a need-to-know basis, as provided for pursuant to federal law, except as specified.

~~Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.~~

~~This bill would make legislative findings to that effect.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Article 5 (commencing with Section 25547) is added to Chapter 6.95 of Division 20 of the Health and Safety Code, to read:

Article 5. Spill Prevention and Response for Railroads

25547. For purposes of this article, the following terms have the following meanings:

(a) “Bakken oil” means petroleum crude oil, Class 3, sourced from the Bakken shale formation in the Williston Basin.

~~(a)~~

(b) “Hazardous material” means a substance or material that the United States Secretary of Transportation has determined to be capable of posing an unreasonable risk to the health, safety, and property of residents when transported in commerce and has been designated as hazardous pursuant to Section 5103 of Title 49 of the United States Code. Hazardous material includes hazardous substances, as defined in Section 25501, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in Section 172.101 of Title 40 of the Code of Federal Regulations, and materials that meet the defining criteria for hazard classes and divisions in Part 173 of Title 49 of the Code of Federal Regulations.

~~(b)~~

(c) “Office” means the Office of Emergency Services.

~~(c)~~

(d) “Oil” has the same meaning as in Section 8670.3 of the Government Code.

~~(d)~~

(e) “Rail carrier” means a person providing common carrier railroad transportation for compensation, but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation.

25547.2. (a) No later than January 31, 2015, and every three months thereafter, a rail carrier shall *prepare and* submit to the office commodity flow data for the prior three months broken down by county and track route relevant to the 25 largest hazardous material commodities transported through the state, including tank

cars loaded with oil cargo. The commodity flow data shall conform to all of the following:

(1) Be in accordance with Subpart G of Part 172 of Title 49 of the Code of Federal Regulations and in Standard Transportation Commodity Code numeric sequence.

(2) Include a description of the hazardous material or oil cargo and commodity name organized by number of carload type, including tank cars and gondola cars, intermodal loads, including trailers, containers and tank containers, and total loads transported within a county over the prior three months.

~~(3) Be encrypted and stamped as security sensitive information material, as identified pursuant to Section 15.5 of Part 15 of Title 49 of the Code of Federal Regulations.~~

(b) The office shall provide access to commodity flow data as authorized by Part 15 (commencing with Section 15.1), Part 1520 (commencing with Section 1520.1), and Part 172 (commencing with Section 172.1) of Title 49 of the Code of Federal Regulations and Section 11904 of Title 49 of the United States Code.

(c) (1) Beginning January 31, 2015, consistent with the United States Department of Transportation's Emergency Order Docket No. DOT-OST-2014-0067, and any subsequent amendments to that order, a rail carrier shall prospectively estimate and submit to the office notification of the weekly movements of trains through a county, including, but not limited to, track route and volumes of shipments of Bakken oil in amounts equal to or greater than one million (1,000,000) gallons per train consist. A rail carrier shall update the notification provided pursuant to this paragraph once every six months.

(2) Notwithstanding paragraph (1), a rail carrier shall update and notify the office within 30 days of the rail carrier determining that there will be a material change in the estimated volume of Bakken oil plus or minus 25 percent per week relative to the most recent estimate previously submitted to the office.

~~(b)~~

(d) The office shall disseminate information necessary for developing emergency response plans from the quarterly reports prepared pursuant to this section subdivisions (a) and (c) in whole or in summary form to a unified program agency, as defined in Section 25501, when the office determines a unified program agency area of responsibility may be impacted by a hazardous

1 material or oil cargo spill. Rail carriers shall provide additional
2 information to the office related to the specific commodity flow
3 data *and Bakken oil* to assist a unified program agency with its
4 emergency response planning.

5 25547.4. Each rail carrier shall maintain a response
6 management communications center, which shall provide real-time
7 information to an authorized public safety answering point or 911
8 emergency response center about the train consist involved in a
9 hazardous material or oil cargo spill or other critical incident,
10 including, but not limited to, both of the following:

11 (a) Hazardous material movement shipping papers, including
12 a way bill or total trace, detailing the hazardous material or oil
13 cargo.

14 (b) Information that can assist the primary local public safety
15 agency in containing and safely removing a hazardous material
16 spill.

17 25547.6. (a) Each rail carrier shall provide the office with a
18 summary of the rail carrier's hazardous materials emergency
19 response plan. The *rail carrier's* hazardous materials emergency
20 response plan shall not be posted on a public Internet Web site or
21 be subject to public agency or public review and approval
22 processes.

23 (b) The office shall provide a copy of each summary report of
24 a rail carrier's hazardous materials emergency response plan to
25 each unified program agency, as defined in Section 25501, when
26 the office determines a unified program agency area of
27 responsibility may be impacted by a rail carrier spill of hazardous
28 material or oil ~~cargo and that unified program agency has been~~
29 ~~identified by the rail carrier, in consultation with the office, as able~~
30 ~~to receive security sensitive information, as identified pursuant to~~
31 ~~Section 15.5 of Part 15 of Title 49 of the Code of Federal~~
32 ~~Regulations, on a need-to-know basis.~~ *cargo. The provision of the*
33 *summary report of a rail carrier's hazardous materials emergency*
34 *response plan shall comply with Part 15 (commencing with Section*
35 *15.1), Part 1520 (commencing with Section 1520.1), and Part 172*
36 *(commencing with Section 172.1) of Title 49 of the Code of Federal*
37 *Regulations and Section 11904 of Title 49 of the United States*
38 *Code.*

39 25547.8. ~~(a)~~ A recipient of the reports and plans provided
40 pursuant to Sections 25547.2 and 25547.6 shall *comply with Part*

1 15 (commencing with Section 15.1), Part 1520 (commencing with
2 Section 1520.1), and Part 172 (commencing with Section 172.1)
3 of Title 49 of the Code of Federal Regulations and Section 11904
4 of Title 49 of the United States Code for the purposes of
5 determining who may have access to the information contained in
6 the reports and shall not divulge or make known that information
7 to unauthorized recipients, including, but not limited to, individuals
8 or organizations not legally authorized to engage in emergency
9 planning and response activities. recipients. Disclosure and
10 dissemination of information in the reports shall be done solely
11 for the purpose of providing the safe transport of hazardous
12 material, crude oil, and Bakken oil through the state and is deemed
13 necessary to assist with emergency response planning.

14 (b) ~~The reports and plans provided pursuant to Sections 25547.2~~
15 ~~and 25547.6 shall be deemed to be proprietary information and~~
16 ~~shall be disseminated only to those government personnel with~~
17 ~~emergency response, planning, or security-related responsibilities~~
18 ~~on a need-to-know basis, as provided for pursuant to federal law,~~
19 ~~including, but not limited to, Part 15 (commencing with Section~~
20 ~~15.1), Part 1520 (commencing with Section 1520.1), and Part 172~~
21 ~~(commencing with Section 172.1) of Title 49 of the Code of~~
22 ~~Federal Regulations and Section 11904 of Title 49 of the United~~
23 ~~States Code. However, the office may authorize disclosure if, in~~
24 ~~the discretion of the office, disclosure relevant to a particular~~
25 ~~shipment is necessary to provide for its safe transport through the~~
26 ~~state and is necessary to assist with emergency response planning.~~

27 SEC. 2. ~~The Legislature finds and declares that Section 1 of~~
28 ~~this act, which adds Section 25547.8 to the Health and Safety Code,~~
29 ~~imposes a limitation on the public's right of access to the meetings~~
30 ~~of public bodies or the writings of public officials and agencies~~
31 ~~within the meaning of Section 3 of Article I of the California~~
32 ~~Constitution. Pursuant to that constitutional provision, the~~
33 ~~Legislature makes the following findings to demonstrate the interest~~
34 ~~protected by this limitation and the need for protecting that interest:~~

35 In order to provide for the safe transport of hazardous materials
36 through the state and to avoid creating a transportation security
37 risk, it is in the state's interest to limit public access to this
38 information.

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